U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29998274

Date: MAR. 27, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a competitive cyclist, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner satisfied the initial evidence requirements for this classification by demonstrating his receipt of a major, internationally recognized award or, in the alternative, by meeting at least three of the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(l)(A) of the Act.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner may demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, a petitioner must provide

sufficient qualifying documentation demonstrating that they meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F.Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner indicates his self-employment as a competitive cyclist from January 2004 until September 2022.[1] The record contains documentation of his competitive results in road and track racing between 2004 and 2011.[2] He provides that he intends to continue his professional career as a competitive cyclist in the United States and "begin my transition to coaching."

A. Evidentiary Criteria

The Petitioner does not claim to qualify for extraordinary ability classification based on a one-time achievement; therefore, he must submit evidence meeting at least three of the ten alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director determined that the Petitioner submitted evidence related to four of the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) and concluded he did not satisfy any of them.

On appeal, the Petitioner submits additional evidence and maintains that he meets the same four evidentiary criteria he previously claimed.[3] For the reasons discussed below, we find that the Petitioner has not demonstrated that he satisfies the requirements of at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

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[1] *See* the Petitioner's Form I-485, Application to Register Permanent Residence or Adjust Status.

[2] The record shows that the Russian Cycling Federation, the national governing body of sports cycling in Russia, is a member of the European Cycling Union continental confederation, which is a member of the International Cycling Union (UCI), the world governing body for the sport.

[3] We consider the Petitioner's prior eligibility claims not raised or contested on appeal to be abandoned. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

U.S. Citizenship and Immigration Services (USCIS) first determines whether the published material was related to the person and the person's specific work in the field for which classification is sought.[4] The published material should be about the person, relating to the person's work in the field, not just about the person's employer and the employer's work or another organization and that organization's work.[5] USCIS then determines whether the publication qualifies as a professional publication, major trade publication, or other major media publication.[6]

At the time of filing, the Petitioner submitted three articles published by the online sports website Cyclingnews.com in July and August 2007. The article titled [redacted] is about the results of the 2007 [redacted] held in Bulgaria. The article mentions that the Petitioner won the race ahead of Ignas Konovalovas from Lithuania and Latvian Normunds Lasis. It notes that Daniel Martin had to abandon the race. It also provides that the recent competitive successes of Mr. Konovalovas, including in the European Championships in Germany, have resulted in a contract with Credit Agricole.

A second article titled [redacted] mentions that the Petitioner won the 2007 [redacted] and discusses the individual results of the members of the [redacted] team. A third article, titled [redacted] indicates that the Petitioner, Ian Stannard, and Marcel Beima are "young, promising riders from the lesser ranks" selected by the [redacted] Team to "race with the pros until the end of the season." It also mentions five riders selected by the professional teams Landbouwkrediet-Tonissteiner and Saunier Duval-Prodir.

Although the Petitioner's name is mentioned in the above articles published on Cyclingnews.com, the articles are about the overall results of the 2007 U23 Road European Championship and the selection of apprentice bike racers by several professional cycling teams; they are not about the Petitioner. Articles that are not about the petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin,* 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor). In addition, the Petitioner did not submit evidence to establish that Cyclingnews.com is a major trade publication or other major media. The Petitioner's initial submission provided screenshots from www.similarweb.com showing a global rank of 18,109, a country rank of 11,674, and category rank of 9.[7] However, the Petitioner did not demonstrate the significance or relevance of these numbers to establish the major status of the website.[8]

Finally, the Petitioner submitted an article titled [redacted] published in *Na Vyrost*, which mentions the Petitioner's name among a list of young sports scholarship recipients in the [redacted] region. The article does not identify the author or the date of the material as required by

[4] *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual.
[5] *Id.*
[6] *Id.*
[7] The Petitioner's RFE response included updated screenshots from www.similarweb.com showing a global rank of 10,628, a country rank of 6,745, and category rank of 5.
[8] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1) (providing that in evaluating whether a submitted publication is a professional publication, major trade publication, or other major media, relevant factors include the intended audience (for professional and major trade publications) and the relative circulation, readership, or viewership (for major trade publications and other major media).

the regulation, and is not accompanied by evidence that this publication qualifies as major media. Rather, this publication appears to be a local or regional publication.[9]

Accordingly, the Petitioner did not show he meets every element of this criterion.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv).

This regulatory criterion requires a petitioner to show that he has acted as a judge of the work of others in the same or an allied field of specialization.[10] For the reasons outlined below, a review of the record does not reflect that the Petitioner submitted sufficient documentary evidence demonstrating that he meets this criterion.

In a personal statement provided within his initial submission, the Petitioner indicated that "as an expert in the field, I have been selected to judge the work of others as a Referee for the elite Cycling competitions." The Petitioner submitted his "Sport Referee's Record Book" from the Ministry of Sport of Russian Federation and issued by the Regional Sports Public Organization Federation of Cycling in [redacted] indicating his assignment as a "referee" on 24 occasions between September 2018 and December 2021. The above evidence does not explain the role of a sport cycling referee.

In his request for evidence (RFE), the Director acknowledged that the Petitioner sought to use his experience as a referee, but noted that the record did not contain sufficient information to establish that he acted as a judge consistent with the plain language of this regulatory criterion, rather than as a referee, "ensuring fair play according to the rules." In response to the RFE, counsel for the Petitioner claimed that the Petitioner's Sport Referee's Record Book "lists the specific competitions or events where he actually performed the judging." Counsel further asserted that a cycling competition judge is the same position as a cycling "commissaire," and provided the 2019-2020 UCI Track Events Training Guide for Commissaires as "documentation of the duties . . . of Commissaires for different types of races." However, counsel's unsubstantiated assertions do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight").

Again, this regulatory criterion requires a petitioner to show that he has acted as the judge of the work of others in the same or an allied field of specialization. The Petitioner has relied solely on his Sport Referee's Record Book, and did not submit corroborating evidence, such as his event-specific judging credentials, or official records from one or more events in which he claims he served as a judge, to show that he actually participated as a judge for cycling competitions. Here, the Petitioner's evidence does not reflect the duties of a cycling referee to demonstrate whether they involve evaluating or

[9] Although the Petitioner provides additional articles on appeal, because he was put on notice and given a reasonable opportunity to provide this evidence, we will not consider it for the first time on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial").

[10] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

judging the work or skills of competitors as opposed to enforcing the rules of a match and ensuring sportsmanlike competition. We agree with the Director's determination that the submitted Sport Referee's Record Book is insufficient to show that serving as a cycling "referee" is consistent with participating as a judge of the work of others.

On appeal, counsel for the Petitioner argues that "[i]n reality, [the Petitioner] was a judge" who was "the final decider in who won the race," and provides other instances in which he claims the Petitioner performed "the prerogatives of the judge, not a referee." Again, counsel's assertions do not constitute evidence. *Matter of S-M-,* 22 I&N Dec. at 51. In addition, the Petitioner argues that there was "an unfortunate mistake in translation where the interpreter used a 'referee' as opposed to the proper use – 'judge.'" On appeal he offers new documentation, including a retranslation of the above sport record book. Although the Petitioner provides additional argument and documentation on appeal, as previously stated we will not consider new eligibility claims or evidence for the first time on appeal. *See* 8 C.F.R. § 103.2(b)(11)*; Soriano*, 19 I&N Dec. at 766.[11]

For the reasons discussed above, the Petitioner did not show that he meets this criterion.

B. Final Merits Determination

The Petitioner did not establish he satisfies the criteria relating to published material in certain media and judging. Although the Petitioner also claims eligibility for the awards criterion under 8 C.F.R. § 204.5(h)(3)(i) and the membership criterion under 8 C.F.R. § 204.5(h)(3)(ii), we need not reach these additional grounds because the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). We also need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Accordingly, we reserve these issues.[12] Nevertheless, we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F.Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021), *aff'd*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). *See also Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian,* 596 at 1122 (upholding denial of petition of a

[11] The regulation at 8 C.F.R. § 103.2(b)(3) requires that any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. In addition to the regulation at 8 C.F.R. § 103.2(b)(3), the Petitioner was notified by USCIS instructions to Form I-140 and the Director's RFE of the requirements regarding the translations of foreign language documents.

[12] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where applicants do not otherwise meet their burden of proof).

published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach).

Here, the Petitioner has not shown the significance of his work is indicative of the required sustained national or international acclaim or it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). The record does not contain sufficient evidence establishing him among the upper echelon in his field.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated his eligibility for classification as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.